

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0148P

Corporate Income Tax

For the Fiscal Years Ending July 31, 1997, 1998, and 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The taxpayer is a wholly owned subsidiary of a company that produces aerial work platforms and material handling equipment. The taxpayer provides after-sales service and support including sales of replacement parts, equipment leases, training, and used equipment sales and reconditioning. The taxpayer was audited by the department; the audit resulted in an assessment of additional gross income tax and penalty.

In a letter dated November 14, 2001, the taxpayer conceded its liability for the additional tax but protested the imposition of penalty. The taxpayer asserted that at the time of filing its income tax returns, it was not aware of the relevant provisions of the Indiana tax law.

DISCUSSION

For gross income tax purposes, the taxpayer originally reported income from leased property and commissions at the lower rate of tax. The audit properly reclassified these sources of income to the higher rate of tax. This reclassification constitutes the bulk of the audit assessment.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer. (Emphasis added)

Clearly, the taxpayer's assertion that, “The company (taxpayer) inadvertently classified the income at the lower rate of tax, not being aware of the provision of the tax code at the time of filing,” indicates ignorance of the listed tax laws. The taxpayer has not established that its failure to timely pay the full amount of tax due was due to reasonable cause and not due to negligence.

FINDING

The taxpayer's protest is denied.